

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN MUSHOVIC,

Plaintiff,

vs.

ALLEGIANT AIR, LLC,

Defendant.

Case No. 2:12-cv-00722-KJD-GWF

ORDER

Motion to Stay Discovery - #15

This matter is before the Court on Plaintiff's Motion to Stay Discovery Pending Court's Ruling on Plaintiff's Motion to Remand Action to State Court (#15), filed on June 22, 2012; Defendant's Opposition to Motion to Stay Discovery (#16), filed on June 28, 2012, and Plaintiff's Reply in Support of its Motion to Stay Discovery (#18), filed on June 29, 2012.

BACKGROUND AND DISCUSSION

Plaintiff filed this action in the Clark County, Nevada District Court on April 9, 2012. Plaintiff's complaint alleges that Defendant wrongfully terminated his employment based on his disability in violation of the Nevada Fair Employment and Housing Act, NRS 233.010 et.seq. and NRS 616.310. Plaintiff also alleges a cause of action for civil conspiracy under Nevada common law. *Complaint* (#1). Plaintiff alleges that he suffers from chronic obstructive respiratory disease ("COPD") which had previously precluded him from serving as a commercial airline pilot for the Defendant. Plaintiff claims, however, that he had sufficiently recovered from the disease to allow him to resume service as a pilot and had received a renewal of his FAA First Class medical certificate. *Complaint* (#1), ¶35. Plaintiff alleges that Defendant required him to submit the medical and psychological examinations and tests which Defendant used as a pretext to terminate

1 his employment. The Defendant removed the case to Federal Court on the grounds that Plaintiff's
2 employment discrimination claim is based on the FAA laws and regulations controlling medical
3 certification of pilots and thus the claim is governed by federal law notwithstanding that Plaintiff
4 has sued for discrimination under Nevada's anti-discrimination statute and not under the federal
5 Americans with Disabilities Act (ADA). Plaintiff has moved to remand this case on the grounds
6 that it is governed by state law and subject matter jurisdiction is lacking in this case.

7 Plaintiff now moves to stay discovery pending a decision on the motion to remand.
8 Although discovery obtained in this action may be used in state court if the motion to remand is
9 granted, Plaintiff expresses concern that he will be subjected to a shorter discovery schedule in
10 Federal District Court than will be the case in Clark County, Nevada District Court. The Court has
11 reviewed the pending motion to remand and is not convinced that it will be granted. In any event,
12 the argument that the period for discovery is longer in state court is not a sufficient reason to stay
13 discovery until the motion to remand is decided. The only thing a stay will accomplish is to delay
14 the commencement of discovery in either court. In the event the motion to remand is denied and
15 the case remains in this court, either or both parties can request additional time under the LR 26-4
16 in which to complete necessary discovery. Accordingly,

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Stay Discovery Pending Court's
18 Ruling on Plaintiff's Motion to Remand Action to State Court (#15) is **denied**.

19 DATED this 2nd day of July, 2012.

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22 GEORGE FOLEY, JR.
23 United States Magistrate Judge
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